HIGH COURT OF UTTARANCHAL, AT NAINITAL

Government Appeal No.195 of 2001
(Old No. 2353 of 1998)

State .....Appellant

Versus

1. Vijod
2. Janak alias Kancha .....Respondents

Sri A. Rab Addl. G. A. for the State –appellant.

Hon'ble J. C. S. Rawat, J.

1. The application for leave to appeal was preferred by the State against the judgment and order dated 03.06.1998 passed by the chief Judicial Magistrate, Pauri Garhwal in criminal case No.896/1997.

2. Brief facts of the case are that on 16.10.1995 at about 6:45 pm the respondents-accused had thrown the acid upon the complainant. When the complainant-Idrish made a hue and cry, Anis Ahmad and Sarvari Khatun came at the spot and the accused persons fled away from the place of incident. The matter was investigated and a chargesheet was submitted against the respondents. Learned Magistrate after appreciating the evidence held that the report was lodged after a lapse of one-month and the delay had not been properly explained. It was further held that PW4 Dr. M. Lal had stated in his evidence that the complainant had not stated to him that how many person have thrown acid upon him. PW4 had also stated that the complainant has admitted before him that the incident took place due to his mistake. The accused persons were acquitted by the learned Magistrate. Feeling aggrieved by this, the State has preferred the present application for leave to appeal.

3. It is a well settled position of law that if two views are possible the view taken by the trial court should be

accepted. The trial court had an occasion to record the demeanour of the witnesses and also to see the conduct of the witnesses deposing before the court. Learned Magistrate has rightly observed that no satisfactory explanation for delay in lodging the FIR has been explained. There were two explanations for delay in lodging the FIR. The first explanation given by the complainant is that he did not lodge the report due to fear. On the other hand there is an evidence on record that the complainant went to the police station but the police did not lodge his report. The explanation submitted by the complainant is itself contradictory with each other. If the report would not have been lodged, he should have sent the information to the superior officers or he should have filed a complaint before the Magistrate under section 156(3) Cr. P.C. The complainant had not taken this recourse. As such, the explanations submitted by the complainant is not cogent and credible. It has come in the impugned judgment that the proceedings under section 107 & 116 were also pending between the parties. It is also pertinent to mention here that if the complainant had a fear he would not have gone to the hospital and he would not have medically examined by the doctor.

4. In view of the above, I find that the leaned Magistrate has rightly acquitted the respondents by a reasoned judgment and there is no infirmity in the judgment passed by him. I am completely in agreement with the findings recorded by the court below. Therefore, the leave to appeal is hereby rejected.

(J.C.S. RAWAT, J.)

Dated 29.03.2006
LSR